

## **REMARKS**

### **Regarding the Specification and Claim Amendments**

Applicants have amended the specification, as indicated above, to correct typographical errors. Further, Applicants have amended Figs. 9 and 10 to add descriptive labels to the boxes corresponding to items 1001-1003 (Fig. 9) and items 2001-2004 (Fig. 10) discussed in the specification. No new matter has been added by these amendments.

Claims 21-40 are pending and under examination. Applicants have amended claims 21, 30, 39, and 40. Support for the amendments may be found in the specification at, for example, p. 4, ll. 11-27, p. 7, ll. 8-14, p. 14, ll. 9-12, and p. 18, ll. 22-29.

### **Regarding the Office Action**

Applicants respectfully traverse the following actions:

- (1) rejection of claim 39 under 35 U.S.C. § 112, second paragraph, as being indefinite;
- (2) rejection of claims 30-39 under 35 U.S.C. § 101 as being directed to non-statutory subject matter;
- (3) rejection of claims 21-26, 29-35, and 38-40 under 35 U.S.C. § 102(b) as being anticipated by Marzo (“An ATM Distributed Simulator for Network Management Research,” hereafter “Marzo”); and
- (4) rejection of claims 27, 28, 36, and 37 under 35 U.S.C. § 103(a) as being unpatentable over Marzo in view of Szymanski (“Real-Time On-Line Network Simulation,” hereafter “Szymanski”).

### **Regarding of Claim 39 under 35 U.S.C. § 112, 2nd Paragraph:**

Applicants request reconsideration and withdrawal of the rejection of claim 39 under 35 U.S.C. § 112, 2nd paragraph, as allegedly being indefinite. The Office Action, citing the recitation of “an object of a system” in claim 39, stated that “[i]t is unclear what statutory category this claim is directed to, and it is unclear what is meant by ‘an object of a system’.” Office Action, p. 2. Applicants respectfully disagree. The claimed “an object of a system” is

directed to a statutory category of a system, as reflected in 35 U.S.C. § 101. Moreover, Applicants' specification describes "an object of a system" at, for example, p. 1, ll. 28-31, p. 7, ll. 1-4, p. 8, ll. 6-9, and also claims 19 and 21 (vis-à-vis original and now-cancelled claims 1 and 19). Claim 39 is definite and the rejection is improper. Accordingly, Applicants request its withdrawal.

**Rejection of Claims 30-39 under 35 U.S.C. § 101:**

Applicants request reconsideration and withdrawal of the rejection of claim 78 under 35 U.S.C. § 101 as being allegedly directed to non-statutory subject matter. The Office Action alleged that "[r]egarding claim 30, the claim is directed to a system, but appears to contain only software elements ... Thus, the claim as a whole is directed to software, per se [and, r]egarding claim 39, the claim recites 'an object of a system...' It is unclear what statutory category this claim is directed to. If it is a system claim, the claim appears to contain only software elements." Office Action, pp. 2-3. Applicants respectfully disagree.

In response, and without conceding to the Office Action's assertions, Applicants have amended claims 30, 39, and 40. Moreover, Applicants direct the Examiner's attention to the specification at, for example, p. 4, ll. 11-27, p. 7, ll. 8-14, and p. 18, ll. 22-29. It is clear that the system recited in claim 30, and the object of a system recited in claim 39, for example, are not directed to a software, per se, but are instead implemented via a computer.

Moreover, Applicants have amended claim 40 to recite a computer-readable medium encoded with a computer program product. As described in the U.S. Patent and Trademark Office's recently issued *Interim Examination Instructions for Evaluating Subject Matter Eligibility under 35 U.S.C. § 101* (Aug. 2009), "a claim to a non-transitory, tangible computer readable storage medium *per se* that possesses structural limitations under the broadest

reasonable interpretation standard to qualify as a manufacture would be patent-eligible subject matter.” *Interim Instructions* at 4.

This overcomes the 35 U.S.C. § 101 rejection of claims 30-39, and Applicants accordingly request its withdrawal.

**Rejection of Claims 21-26, 29-35, and 38-40 under 35 U.S.C. § 102(b) over Marzo**

Applicants respectfully request reconsideration and withdrawal of the rejection of claims 21-26, 29-35, and 38-40 under 35 U.S.C. § 102(b) as being anticipated by Marzo.

In order to establish anticipation under 35 U.S.C. § 102, the Office Action must show that each and every element as set forth in the claim is found, either expressly or inherently, in Marzo. See M.P.E.P. § 2131. Furthermore, “[t]he elements must be arranged as required by the claim.” *Id.* Marzo, however, does not disclose each and every element of Applicants’ claims.

Regarding independent claim 21, Marzo does not disclose at least Applicants’ claimed:

module or device ... which has a plurality of different implementations [and] at least one respective interfacing object with other modules or devices ... having an external side and an internal side ..., said external side ... being uniform for all modules or devices ... and said internal side ... being related to the plurality of different implementations of said modules or devices. (emphases added)

Specifically, Marzo does not disclose or suggest that a device has a plurality of different implementations and also has an interfacing object with an internal side being related to the plurality of different implementations.

In its assertion to the contrary, in its rejection of claim 22, the Office Action erroneously associated ASE and TEG objects in Marzo with the claimed implementations. See Office Action, p. 3. As Applicants’ specification describes at p. 1, line 32 to p. 2, line 4:

It is known that in such simulators there are modules or devices adapted to simulate the behaviour of physical network devices.  
Every module or device can have many implementations

(according to simulated functionalities or technologies) and each of these implementations can be used at will in the simulations: a different way of operating of the module in itself corresponds to each implementation. (emphasis added)

In Marzo, however, “[e]ach ATM node is emulated by a process called ATM Switch Emulator (ASE) ... Another basic process is the Traffic Event Generator (TEG) ... [which is] capable of sending events to the different ASE nodes asking for new connections with certain characteristics, releasing connections, etc.” Marzo, section 2, paragraphs 2 and 4 (emphasis added). Therefore, contrary to the Office Action’s assertion, Marzo’s ASE and TGE correspond to different processes or modules and not directed to different implementations of the same module or device. Moreover, because Marzo does not disclose the claimed plurality of different implementations, Marzo cannot and does not disclose the recited “interfacing object ... having ... an internal side ..., related to the plurality of different implementations of said modules or devices,” as recited in independent claim 21.

Moreover, Marzo does not disclose

providing a statistics managing module to collect statistic data pertaining to the operation of said simulated network; and

measuring said statistic data through said statistics managing module through the external side of said interfacing objects associated with the modules or devices of said set,

as recited in claim 26 (and similarly in claim 35). In its assertion to the contrary, the Office Action cited the first paragraph of section 4 in Marzo. *See* Office Action, p. 4. However, section 4 of Marzo merely states that

[t]o test the platform, a network management application was developed and connected to the simulation platform. This application was designed as a centralised network management application with a powerful graphic interface that allows a network manager to monitor, obtain statistics and manage the simulated AIM network.

That is, Marzo merely mentions that a network manager obtains statistics, and does not disclose or suggest that statistic data is measured through an external side of a interfacing object, as recited in claim 26.

Since Marzo does not disclose each and every element of independent claim 21, Marzo does not anticipate claim 21 under 35 U.S.C. § 102(b). Independent claim 30, although different in scope from claim 21, recites features similar to those in claim 21 and therefore Marzo also does not anticipate claim 30 under 35 U.S.C. § 102(b). Therefore, independent claims 21 and 30 should be allowable over Marzo. Dependent claims 22-26, 29, 31-35, and 38-40 should also be allowable at least due to their dependence from base claim 21 or 30, as well as because they recite additional features not taught or suggested by Marzo. Accordingly, Applicants respectfully request withdrawal of the rejection.

**Rejection of Claims 27, 28, 36, and 37 under 35 U.S.C. § 103(a)**

Applicants request reconsideration and withdrawal of the rejection of claims 27, 28, 36, and 37 under 35 U.S.C. § 103(a) as being unpatentable over Marzo in view of Szymanski. The Office Action has not properly resolved the *Graham* factual inquiries, the proper resolution of which is the requirement for establishing a framework for an objective obviousness analysis. See M.P.E.P. § 2141(II), citing to *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), as reiterated by the U.S. Supreme Court in *KSR International Co. v. Teleflex Inc.*, 550 U.S. 398, 82 USPQ2d 1385 (2007).

In particular, the Office Action has not properly determined the scope and content of the prior art. Specifically, Marzo and Szymanski do not teach or suggest what the Office Action attributes to them. In addition, the Office Action has not properly ascertained the differences between the claimed invention and the prior art, at least because it has not properly interpreted

the prior art and considered both the invention and the prior art as a whole. See M.P.E.P.

§ 2141(II)(B).

As established above, Marzo fails to disclose or suggest each and every feature of independent claims 21 and 30. The Office Action's application of Marzo alone or in combination with Szymanski against the dependent claims does not cure the deficiencies of Marzo as to independent claims 21 and 30. The Office Action's allegations as to Marzo and Szymanski with regard to the dependent claims does not address the failure of Marzo to teach or suggest each and every element of the independent claims, as explained in the previous section.

For each of dependent claims 27, 28, 36, and 37, the Office Action first relied on Marzo to disclose all features of one of claims 21 and 30, and further cited Szymanski for the disclosure of additional features recited in the dependent claims which are admittedly missing from Marzo. See Office Action, pp. 6-7. Szymanski, however, does not cure the deficiencies of Marzo as to at least independent claims 21 and 30. That is, Szymanski does not, for example, teach or suggest Applicants' claimed:

module or device ... which has a plurality of different implementations [and] at least one respective interfacing object with other modules or devices ... having an external side and an internal side ..., said external side ... being uniform for all modules or devices ... and said internal side ... being related to the plurality of different implementations of said modules or devices,

as recited in claim 21 (emphases added).

Thus, the Office Action has not properly ascertained the differences between the prior art and the claimed invention. Independent claims 21 and 30 are not obvious over Marzo and Szymanski, whether taken alone or in combination, and should be allowable. Dependent claims 27, 28, 36, and 37 are also not obvious and should be allowable at least by virtue of their dependence from base claim 21 or 30, and because they recite additional features not taught or

suggested by Marzo and Szymanski. Accordingly, Applicants respectfully request withdrawal of the rejection.

**Conclusion**

Applicants request reconsideration of the application and withdrawal of the rejections. Pending claims 21-40 are in condition for allowance, and Applicants request a favorable action.

The Office Action contains a number of statements reflecting characterizations of the related art and the claims. Regardless of whether any such statements are identified herein, Applicants decline to automatically subscribe to any such statements or characterizations.

If there are any remaining issues or misunderstandings, Applicants request the Examiner telephone the undersigned representative to discuss them.

Please grant any extensions of time required to enter this response and charge any additional required fees to Deposit Account 06-0916.

Respectfully submitted,

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